

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

MICHAEL KEITH LAMBERT,	:	
	:	
Petitioner,	:	
	:	
v.	:	ACTION NO. 2:13cv483
	:	
HAROLD W. CLARKE, Director,	:	
Virginia Department of Corrections,	:	
	:	
Respondent.	:	

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions of second-degree murder and use of a firearm on June 1, 2004, and subsequent sentencing on September 16, 2004, in the Circuit Court of Prince William County, Virginia. As a result of these convictions, Petitioner was sentenced to serve 40 years in prison.

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Report and Recommendation filed March 21, 2014 recommends dismissal of the petition without prejudice for failure to exhaust.

Each party was advised of his right to file written objections to

the findings and recommendations made by the Magistrate Judge. On April 4, 2014 the court received petitioner's Objections to the Report and Recommendation, and on April 11, 2014 the court received respondent's response to petitioner's objections.

The Court, having reviewed the record and examined the objections filed by petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed March 21, 2014. It is, therefore, ORDERED that Respondent's Motion to Dismiss be GRANTED and the Petitioner's petition be DISMISSED without prejudice.

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall forward a copy of this Final Order to counsel of record for petitioner and counsel of record for respondent.

REBECCA BEACH SMITH
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

April 14, 2014